



2026:AHC:210735-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
FIRST APPEAL No. - 715 of 2017

.....Appellant(s)

Versus

.....Respondent(s)

Counsel for Appellant(s)	:	Anurag Dubey, Pravin Kumar, Vineet Kumar Singh
Counsel for Respondent(s)	:	

Reserved
A.F.R.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

Delivered by Indrajeet Shukla, J.

1. In view of the office report dated 19.01.2026/12.02.2026 service upon the sole respondent is held sufficient. No one is present on her behalf.
2. Heard Mr. Vineet Kumar Singh, learned counsel for the appellant in support of this appeal.
3. This First Appeal under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as 'the Act, 1984') has been instituted by the appellant-petitioner (husband), challenging the judgment and decree dated 12.07.2017 passed by the Principal Judge, Family Court, Mainpuri, in Petition No. 286 of 2015, instituted under Section 9 and, alternatively, under Section 13 of the Hindu Marriage Act, 1955, (for

brevity, 'the Act, 1955') whereby the petition filed by the appellant-petitioner (for short, 'the appellant') has been dismissed ex parte with costs.

Factual Matrix

4. The pleaded case of Appellant is that he was married to the respondent on 17.02.2000, in accordance with Hindu rites, rituals and customs, by observing the ceremony of *Saptapadi*. It is further pleaded that the appellant duly discharged his matrimonial obligations and two daughters were born of the wedlock of parents.

5. It is further pleaded that the appellant is the only son of his parents and was residing with his 68-year-old widowed mother at District Mainpuri. It is alleged that the respondent was, however, persistently pressurizing him to accompany her to her parental home in District Etawah.

6. The further pleading is that the respondent-defendant frequently insulted and misbehaved with the appellant's aged and widowed mother. According to the appellant, from the inception of marriage, the respondent had been persistently pressurizing him to live separately from his 68-year-old widowed mother, and this demand intensified with passage of time.

7. It is also alleged that the appellant was, on numerous occasions, threatened with, false implication in criminal cases relating to dowry, taking advantage of being the daughter of a police personnel. It is pleaded that the aforesaid conduct of the respondent, cumulatively, caused grave mental cruelty to the appellant. Further, the respondent's demand compelling the appellant to abandon his 68-year-old widowed mother and live separately, thereby leaving her in a state of destitution, by itself constitutes an act of mental cruelty.

8. The appellant has cited specific instances of cruelty. It is pleaded that, on 06.07.2012, the respondent not only insulted and misbehaved with the appellant's mother, but also called her father, and thereafter, left for her parental home along with all her jewellery/'Streedhan', including

the jewellery belonging to the appellant's mother, and cash amounting to Rs.50,000/-.

9. The further case pleaded is that, despite repeated efforts made by the appellant to resume their matrimonial life and restore cohabitation, the respondent refused to return to her matrimonial home. Ultimately, on 03.03.2015, the respondent finally denied the company of the appellant. Consequently, the appellant was constrained to institute a matrimonial petition before the Trial Court, seeking, in the first instance, restitution of conjugal rights under Section 9 of the Act, 1955 and, in the alternative, dissolution of marriage by a decree of divorce under Section 13 thereof.

Submissions Advanced By Counsel For Appellant

10. Learned Counsel for the Appellant submitted that the petition instituted under Section 9, and alternatively under Section 13 of the Act, 1955 was registered as Petition No. 286 of 2015, and notice was issued to the respondent. Despite repeated attempts, the summons could not be served upon her. Consequently, substituted service by way of publication in a newspaper was resorted to on 28.05.2016. Thereafter, the proceedings were directed to proceed *ex parte* against the respondent on 22.09.2016.

11. The respondent neither filed any written statement nor chose to participate in the proceedings before the Trial Court. Consequently, the pleadings contained in the matrimonial petition remained uncontroverted. The appellant examined himself as PW-1 and tendered his examination-in-chief in the form prescribed under Order XVIII Rule 4 of the Code of Civil Procedure, 1908. He also examined Smt. Sarla Devi as PW-2 and Aishwarya Dutt Dwivedi as PW-3, who, as pleaded, are the respondent's mother and brother, respectively, but joined the appellant's side.

12. The further Contention advanced is that since none appeared on behalf of the respondent, the witnesses could not be subjected to cross-

examination, and the examination-in-chief of PW-1 to PW-3 remained unimpeached.

13. In this backdrop, the learned Trial Judge proceeded to examine the pleadings contained in the matrimonial petition and the oral evidence adduced by PW-1 to PW-3. However, while declining relief sought by the appellant, the Trial Court, in our considered opinion, appreciated the evidence in a piecemeal manner/objectively to find fault.

14. The Learned counsel for the appellant further submitted that the alternate relief of restitution of conjugal rights and decree of divorce can simultaneously be made in one single matrimonial petition.

Points of determination

15. In view of the aforesaid factual foundation, we proceed to frame the points for determination arising for our consideration as an appellate Court, as follows:

- (i) Whether the conduct of the respondent in pressurizing the appellant, the only son of his 68-year-old widowed mother, to leave her company and live separately would constitute cruelty, at least mental cruelty and, a fortiori sufficient ground for dissolution of marriage by a decree of divorce?
- (ii) Whether repeatedly sowing in the mind of a spouse the seeds of apprehension about the lodging of false criminal cases constitutes mental cruelty so as to furnish a ground for dissolution of marriage?
- (iii) Whether uncontroverted pleading giving various instances of cruelty, coupled with unimpeached testimony for want of cross examination, is sufficient in law for passing a decree of divorce?

Analysis/Reasoning

16. All the points of determination are interconnected; thus, they are being taken up together for consideration.

17. In the context of the unrebutted pleadings and unimpeached evidence, we as a Court of First Appeal, proceed to reassess and reappreciate the entire evidence led before the Trial Court. The appellant

pleaded and proved through oral evidence of witnesses that he was compelled/pressurized by the respondent to abandon the company of his 68 years old widowed mother knowing well that his father had already passed away. The attempt to deprive the appellant's mother of her son's company in the twilight years of her life is a cruel act on the part of the respondent. The respondent lost sight of the fact that the appellant was the sole son of his parents. The respondent left the appellant's company way back in the year 2012 and remained herself out of matrimonial life for a continuous period of almost three years which is a considerable period of her in young age, depriving the appellant of conjugal relationship. The undue interference of the in-laws had made the appellant's life measurable. An unusual fact which this Court notices is that the mother and brother of the respondent themselves entered the witness box proffering their statement-in-chief under Order XVIII Rule 4 of the Code of Civil Procedure, 1908, which, too remained unrebutted in the absence of any cross examination. Thus, the oral evidence of all the three witnesses of fact remained unimpeached. The long desertion on the part of respondent is established from the testimonies of her own mother and brother.

18. The testimony of the witnesses with respect to desertion by the respondent and her conduct, in pressurizing/compelling the appellant to abandon the company of his old widowed mother remains unimpeached. Thus, there was no occasion for the Trial Court to disbelieve the aforesaid part of the evidence which was in consonance with the pleadings. It is settled law that the pleadings supported by affidavit and duly established through unimpeached evidence is worthy of reliance. The Trial Court had no reason to disbelieve the oral testimony of PW-1 to PW-3, particularly with respect not only as to desertion but also in regard to compelling the appellant to abandon his old and widowed mother, aged about 68 years. The Trial Court failed to even frame the issues and tried the matrimonial petition like a criminal trial, thus, erring in law.

19. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, while laying down illustrative instances of mental cruelty, the Supreme Court recognised that a prolonged and continuous separation may, in the facts and circumstances of a case, itself assume the character of mental cruelty, particularly where the matrimonial relationship has become merely nominal and its continuance serves no meaningful purpose. In **Samar Ghosh (supra)** it was observed:

“38. Before we critically examine both the judgments in the light of settled law, it has become imperative to understand and comprehend the concept of cruelty.

39. Shorter Oxford Dictionary defines “cruelty” as “the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another’s pain; mercilessness; hard-heartedness”.

40. The term “mental cruelty” has been defined in Black’s Law Dictionary (8th Edn., 2004) as under:

“Mental cruelty.—As a ground for divorce, one spouse’s course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”

41. The concept of cruelty has been summarised in Halsbury’s Laws of England (Vol. 13, 4th Edn., para 1269) as under:

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant’s capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists.”

44. *This Court has had an occasion to examine in detail the position of mental cruelty in N.G. Dastane (Dr.) v. S. Dastane [(1975) 2 SCC 326], SCC at p. 337, para 30 and observed as under:*

“The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.”

46. *In Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] this Court had an occasion to examine the concept of cruelty. The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.*

8. *Again, this Court had an occasion to examine in great detail the concept of mental cruelty. In V. Bhagat v. D. Bhagat [(1994) 1 SCC 337] the Court observed, in para 16 at SCC p. 347, as under:*

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in

each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

55. This Court in Vinita Saxena v. Pankaj Pandit [(2006) 3 SCC 778] aptly observed as under: (SCC p. 798, paras 37-38)

“37. As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

38. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.”

97. This Court in Naveen Kohli v. Neelu Kohli [(2006) 4 SCC 558] dealt with the similar issues in detail. Those observations incorporated in SCC paras 74 to 79 are reiterated in the succeeding paragraphs: (SCC pp. 579-80)

“74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open

the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinise its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.”

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

(emphasis added)

20. The pleadings are uncontroverted as the respondent let the proceedings go *ex parte*, Thus, we may examine the effect of non-filing

of a written statement vis-à-vis admission of pleadings. If a defendant chooses not to file a written statement and also does not cross examine the plaintiff, the plaintiff's uncontroverted testimony in the examination-in-chief stands accepted and carries full evidentiary value, though the Court must still independently verify whether the plaintiff's pleadings and evidence legally justify a decree.

21. The respondent did not participate in the trial and resultantly no cross examination took place. Thus, we examine the effect of non-cross-examination and value of the statement-in-chief without any cross. Even with a zero cross examination or defense a Court cannot automatically grant a decree merely as a formality. The plaintiff must still prove his case on the basis of a valid cause of action and reliable evidence. The Court acts as a final filter to ensure that the uncontroverted evidence makes the cause of action a lawful claim before passing judgment in an *ex parte* trial. Where a particular material assertion is made by a witness in his examination-in-chief and the witness is not cross-examined in respect of that assertion, it will be taken that the party affected had admitted the truth of that assertion.

22. Under the Indian Evidence Act, when a witness makes a statement in their examination-in-chief and is not cross-examined by the opposing party despite opportunity, the truth of that statement is legally deemed to be accepted or admitted by non-challenge.

23. Even an *ex-parte* decree under Order IX, Rule 6(a) of CPC should satisfy the description of "judgment" as laid down in Order XX, Rule 4(2) CPC. A 'judgment' for its sustenance must contain not only findings on the points, but must also refer to the evidence and how does it prove the petitioner's case. A judgment unsupported by reasons is no judgment in the eyes of law, because reasons are the links between the material on record and the conclusion arrived at by the Court. The mere fact that the defendant absented himself on the date of hearing and the suit proceeded *ex-parte*, does not by itself, entitle the plaintiff to get a decree in his favour. The Court is under an obligation to apply its mind to whatever *ex-parte* evidence or affidavit filed under Order XIX of the CPC is on

the record of the case, and application of mind must be writ large on the face of record. This is possible only if the court directs itself to whatever material is on record of the case, analyses the same and then comes to any conclusion on the basis of evidentiary value of the *ex-parte* evidence or affidavit brought on record by the plaintiff. In the case in hand, the judgment and decree in question does not pass muster of Order XX, Rule 4(2) CPC.

24. *An ex-parte* decree cannot be passed by the Court without the plaintiff having proved his case and by only accepting the uncontroverted version of the plaint. The plaintiff must prove his case even if the defendant fails to file a written statement. The Court has not to act blindly upon the admission of a fact made by the defendant in his written statement. Nor should the Court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in his plaint filed in the Court. In a case where a written statement has not been filed, the court should be a little cautious in proceeding under Order VIII, Rule 10 of CPC. Before passing judgment against the defendant, it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint.

25. The Trial Court, while appreciating the evidence of the appellant, accepted that the possibility of the respondent pressurizing the appellant to live separately could not be ruled out. The Trial Court observed: *“On considering these statements of the petitioner, it may be possible to understand that the opposite party was pressurizing the petitioner to live separately.”* However, at the same time, the Trial Court discarded the evidence regarding the respondent taking away the jewellery and cash, observing that *“it is difficult to apprehend as to whether the jewellery and money were kept at such an open and accessible place in the house that opposite party could easily take them away without informing anyone.”*

26. The Trial Court further observed that “no one saw the opposite party taking away the jewellery and money.” Thus, while accepting the possibility of the respondent pressurizing the appellant to live separately, which may result in abandonment of the latter’s mother, the Trial Court discarded the other part of the appellant evidence on the ground that there was no direct evidence of the respondent having taken away the jewellery and money.

27. The Trial Court further recorded a finding that the appellant had failed to adduce any evidence to establish that the jewellery in question was in the possession of his mother or that the same had in fact been taken away by the respondent-defendant. Similarly, no evidence was found to have been produced to establish that an amount of Rs.50,000/- was actually kept in the house and that the opposite party had actually taken it away.

28. The further finding is that neither the appellant’s mother had been produced as a witness nor any bill relating to jewellery produced. Therefore, the allegation levelled by appellant that respondent had taken away the jewellery and cash in the sum of Rs. 50,000/-, in the absence of evidence cannot be held proved. The Trial Court found the allegations so damaging to the matrimonial ties that no wife could live with her husband in the background of such allegations.

29. Even if it is assumed that she took away jewellery and cash from the share household and the findings mentioned trying the petition as a criminal trial, ought to have been avoided without jurisdiction as same is within the domain of the Trial Judge, seized of any criminal proceedings, if instituted. In any view of the matter, the prayer for both restitution of conjugal rights and dissolution of marriage cannot be refused together.

30. We are afraid that the Trial Court had tried a matrimonial petition as a criminal trial of theft and disbelieved the evidence of cruelty on the ground that the story set up in relation to the taking away of jewellery and cash could not be proved. With regard to cruelty, the evidence and the pleadings of not taking only jewellery and cash was there but there were other instances such as pressurizing the son to abandon the

company of his 68 years old widowed mother in twilight years of her life.

31. We are also in complete agreement with the Trial Court that the allegation of taking away the jewellery and money, in the backdrop of a matrimonial relationship, was an allegation in the nature of theft and, therefore, ought have been avoided by the parties to the marriage. Such an allegation, particularly when made against one spouse, have the potential to seriously impair mutual trust and the foundation of the matrimonial relationship.

32. At this stage it is expedient to spare a look at Section 14 and 16 of the Act, 1984, relevant for consideration of the evidence of parties, particularly, evidence that remained unimpeached (as despite there being full opportunity one of party chose not to participate in proceedings). For ready reference Section 14 and 16 are reproduced hereinbelow:

***“14. Application of Indian Evidence Act, 1872.-** A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).*

16. Evidence of formal character on affidavit.-

(1)The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2)The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.”

33. Learned counsel for the appellant relied upon judgment of the Supreme Court in **Vibhor Garg Vs. Neha, 2025 (10) SCC 128**, which sheds light on the scope of Section 14 of the Family Court Act, 1984 with regard to the admissibility of evidence before a Court trying matrimonial petition. The relevant paragraph No.10.2 of the report in **Vibhor Garg (supra)** reads:

“10.2 Section 14 of the F.C. Act gives a wide discretion to the Family Courts in deciding matrimonial disputes since they can go beyond the strict rules of evidence in terms of relevance and admissibility while

admitting any evidence which they think is relevant for the adjudication of the dispute at hand. However, we do not think that adverting to Section 14 of the F.C. Act is required in the present facts when the Evidence Act itself permits such a communication to be admitted in evidence by way of an exception. The powers under Section 14 of the F.C. Act would normally be resorted to in a scenario where the Evidence Act creates some prohibition with respect to relevance or admissibility of any evidence. But if the Family Court is of the opinion that it is expedient to go beyond the procedural technicalities of the Evidence Act for adjudicating the dispute, in such a case, the Family Court is allowed to take that evidence on record, notwithstanding what is stated in the Evidence Act. But the exercise of this extraordinary power under Section 14 of the F.C. Act is not warranted in this case."

(emphasis added)

34. Further reliance has been placed on the authority of the Supreme Court in **Mohammad Shaheryar Khan Vs. Mrs. Humaira Khan, 1996 SCC Online AP 482**, which deals with the scope of Section 14 and 16 of Family Court Act, 1984, with regard to the admissibility of any statements and documents in evidence before the Family Court. The relevant paragraph No.31 of the said report reads:

"31. The learned counsel for the respondent further contended that the Family Court erred in relying on documents which though marked were not proved by any witness. Section 14 of the Family Courts Act, 1984 provides that "A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872)." In view of this provision, the Family Court is competent to receive the reports, statements, documents, etc. The respondent has not questioned the documents, etc. received by the Court. Most of the documents received are certified copies of complaints, reports, etc. filed in Courts. Therefore, we do not find any merit in this contention. Mr. Rajeswara Rao next contended that the Family Court erred in proceeding solely on affidavit evidence. Referring to Section 16 of the Family Courts Act, he contended that only evidence of formal character may be given by affidavit and not other evidence. But, we do not find that any objection was taken before the Family Court in this regard. It is not the case of the respondent that he wanted to cross-examine and that was refused. Therefore, he cannot raise this objection now."

35. Learned counsel for the appellant has also placed reliance upon the authority of this Court in **Jagdish Prasad Vs. Ivth Additional Sessions**

Judge, Varanasi and others, 1995 SCC Online All 138, with regard to the scope of affidavits filed in *ex-parte* proceedings. Paragraph Nos. 9 and 10 of the report in Jagdish Prasad (*supra*) read:

“9. Affidavit is a statement of a person either on oath or on affirmation. If the Court permits such a statement to be given by a witness in relation to matters of fact under enquiry, such a statement is called oral evidence. The Court has also got powers under Order XIX C.P.C. in civil matters to direct a witness to file an affidavit in relation to matters of fact under inquiry. In criminal proceedings also, the Code of Criminal Procedure empowers the Court to require a witness to file an affidavit in relation to matters of fact under inquiry. Sections 295 and 296 of the Cr.P.C empower the Court in the course of inquiry, trial or other proceeding under the Code requiring evidence of the facts to be given by an affidavit. Section 296 gives the general power to the Court with the rider that if an application is given by the prosecution or the accused, the Court shall summon and examine any such person as to the facts contained in his affidavit. Being thus empowered by law the Court has got the discretion either to permit or require a witness to file an affidavit in relation to matters of facts under inquiry, trial or other proceedings. In case the Court neither requires nor permits by any specific order expressly recorded, but actually receives an affidavit of a party or a witness as an evidence in a proceeding, the Court is deemed to have exercised its discretion impliedly. It is still in the discretion of the Court either to rely upon or reject an affidavit submitted as an evidence by way of proof of the matters of fact under inquiry, trial or proceeding. This position would be evident from a perusal of the proceedings and the judgments of the Court whether any permission or the direction was given expressly to file an affidavit or the affidavit was accepted impliedly as an evidence and it was relied upon or rejected. In *ex-parte* proceedings the Court generally permits or directs party concerned or his witness to file an affidavit as evidence to prove the facts contained in the application or the petition and proceeds to decide the matter on that basis, obviously because the other party has been absenting or is not available to challenge the facts contained in the affidavit made on oath or affirmation, and, even if the opposite party appears at a later stage, he has got an opportunity for cross examining the deponent on his application to the Court. In this procedure also the interest of justice is well protected and the valuable time of the Court, which could have been otherwise wasted in the recording of evidence or memorandum of the evidence of the applicant or the petitioner, and/or the witnesses, would be saved and would be utilised for hearing of other matters awaiting their turn.

10. The proviso to Sub-section (2) of Section 126 makes an exception to the Sub-section (2) and does not oblige the Magistrate to record the evidence in the manner prescribed for summons cases; in view of the special situation that the opposite party has been absenting, neglecting or wilfully avoiding participation in the case. Therefore, an affidavit in such

ex-parte proceedings by way of evidence is permissible in law. The learned Counsel for the petitioner has submitted that the evidence of the applicant or of any witness in proceedings under Section 125 Cr.P.C. cannot be treated as evidence of formal character under Section 296 of the Code. The question whether the evidence is of formal character or not has to be answered on the basis of facts and circumstances of each case. Even this Section 296 of the code which permits the evidence of a person whose evidence is of formal character by affidavit, makes it subject to all just exceptions for being read in evidence in any inquiry, trial or other proceedings under this Code. Besides just exceptions, Sub-section (2) of Section 296 itself provides that the Court shall on the application of the prosecution or the accused summon and examine any such person as to the facts contained in his affidavit. Section 297 which specifies the authorities before whom affidavits can be sworn or affirmed also provides that the affidavits shall be confined to and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief. Sub-section (3) or Section 297 empowers the Court to order any scandalous and irrelevant matter in the affidavit to be struck out or amended. In ex-parte proceedings where the other party has been absenting or neglecting or avoiding wilfully participation in the proceedings, the evidence required from the applicant to prove the facts contained in the application becomes a formality. Even if the affidavit is not permitted, the Court shall record only examination in chief on oath or affirmation of the applicant, or and the witnesses, in a mechanical manner as the other party is not present and no cross examination is called for. If in this circumstance, the Court exercising its discretionary power in the interest of speedy disposal receives an affidavit of the applicant or the witness by way of evidence in proof of the matters of fact contained in the application it does not contravene any specific provision of law or defeat the advancement of interest of justice. Therefore, in my opinion the evidence in ex-parte proceedings becomes a matter of formality to be observed by the applicant. If the Court permits or directs the applicant or the witnesses expressly or impliedly or even receives affidavits in proof of facts contained in the application there is no illegality.

(emphasis added)

36. On a pointed query as to whether a matrimonial petition seeking, by way of alternative relief, both restitution of conjugal rights and a decree of divorce can be maintained in one and the same breath, learned counsel for the appellant relied upon the judgment of the Supreme Court in **Srinivas Ram Kumar v. Mahabir Prasad and others**, 1951 SCC 136. Relevant paragraphs Nos. 12 and 13 of the said judgment read as under:

“12. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two

or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the court to give him relief on that basis. The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit.

13. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in Babu Raja Mohan Manucha v. Babu Manzoor Ahmad Khan [Babu Raja Mohan Manucha v. Babu Manzoor Ahmad Khan, (1942-43) 70 IA 1 : 1942 SCC OnLine PC 30]. This appeal arose out of a suit commenced by the appellant-plaintiff to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower courts as well as by the Privy Council. But the Privy Council held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution under Section 65 of the Contract Act. Although no such alternative claim was made in the plaint, the Privy Council allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard ex parte in the absence of the respondent.”

37. Further reliance has been placed upon the decision of this Court in **Smt. Krishna Devi v. Additional Civil Judge, Bijnor and another, 1985 AIR All 131**. Relevant paragraph Nos. 4, 6, 7 and 8 of the report read:

“4. The scheme of the above section is that during the proceedings under Section 13 of the Act and except on the grounds mentioned in the section, if the Court considers it just having regard to circumstances of the case, it may pass a decree for judicial separation, instead a decree for divorce. There is no bar in any of the provisions of the Act not to seek alternative reliefs and no general discretion is vested in the Court to withhold relief. It is true that the Court by the same decree cannot give both the reliefs.

6. I do not agree with this argument advanced by Shri Zaidi. The scheme of Section 13A is to give some more opportunity to the parties for reconciliation so that within a particular period of time, if they resolve their differences they may be able to reunite, but the purpose of Section 9 is entirely different. A petition under Section 9 is for restoration of conjugal rights, such petition is filed only with good intentions, and as it is clear from the petition filed by the respondent, he has not made any allegation against the petitioner, which may amount to be harsh or denigrating her status or position in society. However, he has also stated in a simple way that since 20th July, 1977 the petitioner is not living with him. This averment made in the petition is in conformity with Sub-section (ib) of Section 13 of the Act which is being reproduced as under: --

"13. Divorce (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife^ be dissolved by a decree of divorce on the ground that the other party--.

(i)&(ia).....

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or"

7. I do not think that alternative relief as has been sought by the opposite party in the writ petition cannot be made in the petition, filed under Section 9 of the Act. The procedures that are to be followed in Such cases are under the Civil P.C.

8. Shri Saxena has drawn my attention to a Supreme Court case, **Firm Shri Nivas Ram Kumar v. Mahabir Prasad AIR 1951 SC 177**. It is true that the facts of that case are entirely different than the present case, but one thing is very clear that Civil P.C. does not prohibit alternative relief. The reliefs may be different or conflicting with each other, but in case of conflicting reliefs only one relief is to be granted by the Court, in case the suit is to be decreed. The principle laid down by the Supreme Court in that case is as follows:-

"A plaintiff may rely upon different rights alternatively and there is nothing in the C.P.C. to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. Ordinarily, the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes."

38. Learned counsel for the appellant relied upon the judgment of the Supreme court in **Sonal Talpada Vs. Veerbhan Singh, 2026 AIR SC 2674**, wherein, it was held that divorce can be granted on the ground of prolonged separation and desertion, even though the ground of desertion had not been pleaded. The relevant paragraphs are reproduced hereinbelow:

“21. While the statutory ground of desertion may not have been pleaded but matrimonial disputes are seldom confined to isolated legal labels. The Court is also required to examine the overall conduct of the parties and the manner in which they have discharged their matrimonial obligations. It is from this broader perspective issue of cruelty deserves further consideration.

22. Marriage, in its legal and constitutional dimension, can never be reduced to a mere contractual intersection of individual rights, nor can it be viewed strictly through the narrow lens of a petition for conjugal rights. It is a deeply personal and social partnership built on mutual respect, shared expectations and equal responsibility. When two parties enter into matrimony, they weave a tapestry of interdependence that demands a continuous balancing of interests. Conjugal rights do not exist in a vacuum; they are the structural counterparts to conjugal duties. To demand the fulfilment of the former while wilfully abandoning the sanctity of the latter is to undermine the very essence of the institution. Matrimony, therefore, is not a one-sided right to be enforced, but a shared covenant of emotional support, fidelity, responsibility and care, where the rights of one are always tied to the duties they owe to the other. Persistent withdrawal from the foundational aspects of marriage may have legal consequences while evaluating allegations of mental cruelty.

23. From the conduct of parties, it is clear that even during the short period of cohabitation they failed to perform their conjugal responsibilities. The parties have strongly held views with regard to the approach towards matrimonial life and they have refused to accommodate each other for a long period of time. As held in the case of Nayan Bhowmick v. Aparna Chakraborty, this Court is of the view that in matrimonial matters involving two individuals, it is not for the society or for the Court to sit in judgment 9 2025 SCC OnLine SC 2798: 2025 INSC 1436 over which spouse’s approach is correct or not. It is their strongly held views and their refusal to accommodate each other that amounts to cruelty to one another.

24. This Court in multitude of cases, has held that in situations where parties have been living separately for a considerable time without any hope for reconciliation amounts to cruelty to both the parties.

25. In the light of the above, it can be said that the High Court has rightly assessed that where parties have been living separately for several years and at this stage asking them to live together after a prolonged duration would amount to cruelty to both the parties and divorce can be granted on this ground as provided under section 13 (1) (ia) of HMA. It may be added here that desertion as a ground requires an initial period as mentioned under the statute but if such desertion continues for a long period of time without any effort on the part of the parties to restore cohabitation would itself be a ground to be considered by the Appellate Court. This we say in the light of the fact that human relations are dynamic and once the initial mandate under the statute stands satisfied, continuation thereof during the litigation would aggravate the said agony which could be confirmational in substantiating the basis and pleaded ground for divorce. The same can be taken into consideration for formation of an opinion to accept the prayer by the Appellate Court. Appeal is the continuation of a suit and therefore, the Appellate Court would be entitled and justified to consider the conduct of the parties during the pendency of litigation. The same can also be looked into to support or reject an opinion on the ground in question.

26. An Appellate Court, while carefully ensuring that a party does not profit from their own manifest wrong or unilateral desertion, may legitimately treat a prolonged period of separation as an indicator of mental cruelty within the meaning of Section 13(1)(ia) of the HMA. The Appellate Court is not precluded from examining whether continuous separation over a substantial period, coupled with absence of any genuine effort at reconciliation, complete cessation of cohabitation and emotional alienation has resulted in mental cruelty. Subsequent events occurring during pendency of proceedings may legitimately be taken into consideration while undertaking such assessment. In such circumstances, the confirmation of a decree of divorce by an Appellate Court is not an invocation of extraordinary constitutional jurisdiction under Article 142 of the Constitution of India, but a lawful and realistic application of the statutory ground of cruelty to the facts of the case.

27. A significant aspect of this case is the prolonged physical separation spanning more than a decade and a half. While the statutory ground of 'desertion' under Section 13(1)(ib) of the HMA has not been formally pleaded by the Respondent-husband however, the element of desertion can be viewed neutrally through an objective lens where spouses choose independent professional and geographical paths and remain completely estranged without any reciprocal effort to bridge the distance.

28. In such circumstances, desertion ceases to be merely a matter of individual malice or unilateral fault rather it assumes the character of a shared, de facto abandonment of the matrimonial covenant. The parties have objectively deserted the matrimonial framework itself. The intentional maintenance of distinct lifestyles, separate domiciles, and

the total cessation of marital interaction over fifteen years establishes a de facto abandonment of the marital covenant by both sides.”

39. Thus, on consideration of various authorities **including Vibhor Garg (Supra), Mohammad Shaheryar Khan (Supra), Jagdish Prasad (Supra)** we hold that the Family Court, in deciding a matrimonial cause can go beyond the strict rules of evidence in terms of relevance and admissibility, while admitting any evidence which they think is relevant for the adjudication of the dispute at hand and can go beyond procedural technicalities of Evidence Act for the purpose of deciding the cause.

40. In view of principles laid down in **Srinivas Ram Kumar (Supra), Smt. Krishna Devi (Supra)**, the alternative relief/prayer of restitution of conjugal rights and decree of divorce is amenable in one single matrimonial petition.

41. We are also cognizant of the law that in the facts and circumstances of the present case, the conduct of the respondent/defendant in exerting persistent pressure upon the appellant to abandon his parents and establish a separate household, if proved by the evidence, would constitute mental cruelty.

42. The pleading and evidence of appellant (husband) clearly establishes that the appellant was deprived of cohabitation and a seed in his mind was endeavoured to be sown by the respondent that the appellant may lose his job or get demoted if she filed a complaint. Sowing such seed in the mind of a person itself may destabilize a common man and would definitely constitute cruelty if the imputations are found to be correct. In the cross-examination nothing could be elicited to show that the evidence of the appellant was not credit-worthy. The case in the statement-in-chief that it was the respondent-wife who exerted pressure upon the appellant to abandon his old parents could not be impeached in his cross-examination. Thus, the part of evidence that for abandonment of parents the appellant was pressurized is worthy of credence and ought be believed.

43. In **Krishna Kumar @ Rinku Vishwakarma v. Smt. Rajkumari @ Rani**, Neutral Citation No. 2026:MPHC-JBP:26422, the Madhya Pradesh High Court, while considering the effect of apprehension of false implication upon the matrimonial relationship, held that sowing a seed of fear in the mind of the spouse that he or his family members may, at any time, be subjected to a false criminal complaint, causing apprehension of social defamation and irreparable mental harassment, constitutes mental cruelty. The Court observed in paragraph 10:

“10. After considering the submissions made by learned counsel for the parties, it is apparent that the appellant and respondent had lived together only for few years and thereafter, they are living separately till date. Learned Family Court has overlooked the fact that the respondent was non-committed NEUTRAL CITATION NO. 2026:MPHC-JBP:26422 7 FA-738-2015 towards the marriage with the appellant and refused to cohabit with the appellant continuously which resulted into mental agony. The respondent also sowed the seed of fear in the mind of appellant that at any time she may file a false complaint against him and his family members, as the respondent/wife has earlier also filed a frivolous case against the appellant and his family members, which could have defamed them in the society and would have caused indelible and irreparable mental harassment. The respondent has continuously deserted the appellant for considerable long period of time, due to which the marriage between them has suffered to the extent of irretrievable breakdown. Thus, in the conspectus of facts and circumstances of the case, it is noticeable that the relationship between the parties has evidently grown sour beyond the point of return and such a long period of separation has turned these differences irreconcilable. It is unfortunate that the parties have already spent a considerable long period of their adult lives fighting marital battles in the courtrooms. The parties still have a considerable natural life ahead of them to look forward to. Therefore, we are inclined to allow the appeal preferred by the appellant/husband and grant divorce on the ground of irretrievable breakdown of marriage, which also falls within the ambit of mental cruelty in the terms of Section 13(1)(ia) of HM Act, 1955. In these circumstances, this Court deems it fit and proper to dissolve the marriage solemnized between the appellant and the respondent on 04.04.2002.”

44. Reference in this regard may be had to the authority of the Supreme Court in **K. Srinivas Rao Vs. D. A. Deepa**, 2013 (5) SCC 226, wherein it has been observed in paragraphs 10 of the report:

“10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnisation of the marriage, treated the petitioner

with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term "cruelty". Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harm"

45. The aforesaid view finds support from the guidance of the Supreme Court in **Narendra Vs. K. Meena, (2016) 9 SCC 455**, where the Supreme Court, while considering a similar situation, held that persistent efforts by a spouse to compel the other spouse to separate from his parents and family members, without any justifiable reason, may constitute an act of mental cruelty

"11.....If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'.

46. The uncontroverted pleadings and the supporting evidence which has admittedly not been tested by cross-examination clearly establishes that there is no reason to disbelieve evidence to the effect that the appellant was compelled to abandon his 68-year-old widowed mother; and that is sufficient to constitute cruelty, particularly mental cruelty. Thus, all the three points of determinations are *ex parte* decided in favour of appellant and against the respondent.

Conclusion

47. By dismissing the matrimonial petition instituted by the appellant husband in toto, which carries the alternative reliefs for a decree of divorce and restitution of conjugal rights is puts the appellant in a limbo that can never be the intention of the statute and no ends of justice are served for either party/ spouse. Thus, the learned Trial Judge completely erred in law.

48. Thus, in view of the un rebutted and uncontroverted pleadings for the want of a written statement, coupled with the unimpeached oral testimony of witnesses, including testimony of the mother and brother of respondent being against her, we hold that the appellant has successfully established the plea of cruelty. Our opinion is buttressed by the elaborate discussion in this judgment, and we are unable to concur with the view taken by the learned Trial Judge favouring a dismissal of the matrimonial petition filed by the appellant. Consequently, this appeal succeeds and the impugned judgment and decree passed by the Trial Court are, accordingly, set aside.

49. The petition for decree of divorce is hereby **allowed** and, consequently, the prayer for a decree of restitution of conjugal rights stands otiose, the marriage solemnized between the appellant,]
and the respondent, stands
dissolved by a decree.

50. Since respondent has not appeared either before the Trial Judge or before this Court, despite sufficient service, no application seeking permanent alimony under Section 25 of the Hindu Marriage Act, 1955 has been made before us. We do not deem it appropriate to adjudicate upon the question of permanent alimony at this stage. It is, however, well settled that a claim for permanent alimony under Section 25 of the Act may be made even after a decree of divorce. Accordingly, it is left open to the respondent to avail that remedy by moving an appropriate application under Section 25 of the Hindu Marriage Act, 1955, if so advised.

51. The Registry is directed to draw up the decree accordingly and transmit a copy of this judgment along with the decree to the concerned Family Court.

52. No order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

September 21, 2026

Mohit